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In the
Supreme Court of the United States

OCTOBER TERM, 1966

No. 726.

THE WACKENHUT CORPORATION, ET AL.,
APPELLANTS,

v.

THE HON. SALVADOR RODRIGUEZ APONTE,
ET AL.,
APPELLEES.

MOTION TO AFFIRM

J. B. FERNANDEZ BADILLO
Solicitor General of the
Commonwealth of Puerto Rico
PETER ORTIZ
Assistant Solicitor General
San Juan, Puerto Rico

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Appellees, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, move that the Opinion and Order of the District Court be affirmed on the ground that the questions are so unsubstantial as not to warrant further argument.

Statement

This is a direct appeal from the Order filed on June 23, 1966 by a district court of three judges convened pursuant to 28 U.S.C. §2284 staying proceedings in the action pending commencement by appellants of a suit in the courts of the Commonwealth of Puerto Rico.

On September 10, 1965 appellants filed an application for Interlocutory and Permanent Injunction seeking to enjoin the governmental authorities from enforcing Act 108 of 1965. On September 16, 1965 a Temporary Restraining Order was filed by the Hon. William C. Mathes, senior district judge. The three judges district court was convened and hearings were held and the case was therefore submitted. On June 23, 1966 the Order appealed from was entered. The appellants filed their Notice of Appeal and have docketed the case and filed their jurisdictional statement.

Argument

Act No. 108 of 1965 has not been interpreted by the local courts of Puerto Rico. As pointed out by the District Court, the case contains local issues, the determination of which might render unnecessary the resolution of the federal issues. This can be done through an authoritative construction by the commonwealth courts. In such a case, abstention lies. *Railroad Commission* v. *Pullman Co.*, 312 U.S. 496; *Spector Motor Service* v. *McLaughlin*, 323 U.S. 101; *Harrison* v. *N.A.A.C.P.*, 360 U.S. 167.

In the instant case the lower court did not abuse its discretion. The procedure adopted by it avoids the possibility of conflict between the federal and local jurisdiction, the unnecessary impairment of state functions, and the premature determination of constitutional questions. *Martin* v. *Casey*, 360 U.S. 219.

This is not an exceptional case where the statute is justifiably attacked on its face as abridging fundamental rights. *Dombrowsky* v. *Pfister*, 380 U.S. 479, or where there is no uncertainty that it applies to appellants activities, *Baggett* v. *Bullitt*, 377 U.S. 360. Since the restraining order is still in effect, there is no delay inherent in referring the ques-

tions to the local courts. *Harman* v. *Fornessius*, 380 U.S. 528.

Appellants place great emphasis on the fact that the court invoked abstention on its own. This is not exactly correct. After the hearing held on April 27, 1966 the appellees filed a Memorandum On Courts Suggestion to Remit Issues to Commonwealth's Court suggesting that if the court determined that a submittal to the Commonwealth court would further the ends of justice, it could do so in the exercise of its sound discretion. [See Appendix]. In any case, whether the federal court should abstain or not, does not have to be raised by any of the parties. It is an attribute of the court, not of the parties, and the court, in the exercise of its sound discretion, may act accordingly. The appellants have not shown a clear abuse of discretion by the district court.

We respectfully submit therefore, that the appellants present no substantial question for the decision of this court and that the Opinion and Order of the District Court should be affirmed.

San Juan, Puerto Rico, January 24, 1967.

(s) J. B. Fernandez Badillo
J. B. Fernandez Badillo
Solicitor General of the
Commonwealth of Puerto Rico

(s) Peter Ortiz
Peter Ortiz
Assistant Solicitor General

Appendix

"In The United States District Court
For The District of Puerto Rico

Civil No. 395-65

The Wackenhut Corporation, et al.
PLAINTIFFS
v.
The Hon. Salvador T. Roig.,
Superintendent of Police, et al
DEFENDANTS

Memorandum On Court's Suggestion To Remit Issues To Commonwealth Court

To the Honorable Court:

The Attorney General for the Commonwealth of Puerto Rico has given careful consideration to the Court's inquiry about the Commonwealth's desire to secure clarification and interpretation of Act Number 108 in the local courts, and alleges:

1. That he is bound by the presumption of constitutionality of existing statutes and, therefore, is unable to file a petition for declaratory decree in the local courts seeking a determination of the validity of the Act.

2. That he considers that the Plaintiffs would be the proper parties to seek a declaratory decree as to the scope of the Act, as relates to the meaning of certain parts of the Act, if they feel that the wording of the Act creates uncertainty as to their rights.

3. It is respectfully suggested that, if this Honorable Court determines that a submittal to the Commonwealth Courts would further the ends of justice, this Honorable

Courts, in the exercise of its discretion can order the Plaintiffs to institute a proper action remitting to the Commonwealth Courts all relevant issues as to the scope of the Act, so that an authoritative construction of the Act may be obtained from the Supreme Court of Puerto Rico. San Juan, Puerto Rico, this 6 day of May, 1966.

Respectfully submitted,

RAFAEL HERNANDEZ COLON, *Attorney General for the Commonwealth of Puerto Rico, and* RAFAEL A. RIVERA CRUZ, *Attorneys for the Defendants*

By: RAFAEL A. RIVERA CRUZ

I Hereby Certify that on this date I mailed a copy of the above Memorandum on Court's Suggestion to Remit Issues to Commonwealth Court to the Attorneys for the Plaintiffs.

RAFAEL A. RIVERA CRUZ"